Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
CONNECT AMERICA FUND	)	**WC Docket No. 10-90**
	)	
A NATIONAL BROADBAND PLAN FOR OUR FUTURE	)	**GN Docket No. 09-51**
	)	
ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS	)	**WC Docket No. 07-135**
	)	
HIGH-COST UNIVERSAL SERVICE SUPPORT	)	**WC Docket No. 05-337**
	)	
DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME	)	**CC Docket No. 01-92**
	)	
FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE	)	**CC Docket No. 96-45**
	)	
LIFELINE AND LINK-UP	)	**WC Docket No. 03-109**

REPLY COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE, CINCINNATI BELL INC., HARGRAY TELEPHONE COMPANY, INC., AND HICKORYTECH CORPORATION

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September 6, 2011

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Summary

This proceeding presents the Commission with a unique opportunity to reform current federal universal service ("USF") and intercarrier compensation ("ICC") programs. ITTA, Cincinnati Bell Inc., Hargray Telephone Company, Inc., and HickoryTech Corporation (the "Joint Commenters") commend the efforts of industry stakeholders to devise a framework that would achieve much-needed modifications to these outdated regimes. The Joint Commenters remind the Commission, however, that the reforms it adopts must properly take into account the interests and needs of all mid-size carriers.

In particular, mid-size incumbent carriers must have a right-of-first-refusal ("ROFR") to receive universal service funding in areas where they already have deployed broadband facilities. The Commission should reject claims by the cable and satellite industries that a ROFR should not be afforded to such providers. Mid-size carriers have invested hundreds of millions of dollars as the carrier-of-last-resort to millions of Americans living in rural, high-cost areas of our country. Cable has chosen not to serve many of these areas and satellite is not a viable option for reliable broadband or voice service. A ROFR mechanism for distribution of universal service support would recognize the achievements already made by mid-size incumbent carriers in serving these high-cost parts of our country and would allow incumbent carriers the ability to recoup their broadband network investment and continue to provide uninterrupted service.

The Commission also must reject calls, primarily from the cable and wireless industries, to restrict the scope or availability of the Access Recovery Mechanism ("ARM") that would assist ILECs in recovering lost revenues as terminating access rates are transitioned. These commenters overlook the fact that intercarrier compensation is a critical revenue component for the Joint Commenters and other mid-size carriers serving high-cost rural areas. These carriers depend on intercarrier compensation revenues to maintain and upgrade the networks they have deployed and are using to provide broadband and voice services to consumers. Elimination of,

or drastic reductions to, intercarrier compensation revenues without an alternative means of revenue recovery would result in substantially increased rates in rural areas, necessitating further reliance on universal service support to meet Commission goals.

In addition, the Commission should refrain from imposing interim build-out milestones and associated penalties on CAF recipients and instead adopt reasonable reporting requirements to ensure that CAF recipients are deploying broadband in supported areas within a reasonable timeframe. The rate at which providers can deploy broadband facilities will vary based on a variety of factors, many of which are beyond CAF recipients' control. Arbitrary benchmarks or limits on CAF support based on the percentage of network deployment a CAF recipient has achieved would serve no useful purpose and could unfairly penalize recipients. A more reasonable approach would be for the Commission to specify an end date by which full build-out must be achieved, and require interim progress reports from CAF recipients to ensure they are in line to comply with this timeframe.

Finally, the Commission should refrain from addressing issues that are not directly related to universal service support and intercarrier compensation, particularly arguments raised by competitive local exchange carriers and others urging the Commission to establish rules requiring IP-based interconnection. Given the extremely complex nature of the USF and ICC regimes, the Commission should focus its efforts in this docket on addressing concerns that are directly related to reforming these programs.

On the other hand, the intercarrier compensation rates that will apply to IP-based traffic is an entirely appropriate issue for the Commission to address in this docket. The Joint Commenters share the concerns of other commenters regarding the disparate treatment for VoIP traffic as proposed in the industry-generated reform plans and support application of the same intercarrier compensation rates to all voice traffic, including IP-based traffic, throughout the transition.

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The Independent Telephone & Telecommunications Alliance ("ITTA"), Cincinnati Bell Inc., Hargray Telephone Company, Inc., and HickoryTech Corporation (the "Joint Commenters") hereby submit their reply comments with respect to the August 3, 2011 *Public Notice* issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1] As a consequence of the limited time made available to respond

[1] *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, DA 13-1348 (rel. Aug. 3, 2011) ("*Public Notice*"). Two ITTA member companies, CenturyLink and FairPoint Communications, are signatories to the "ABC Plan" and both support the framework proposed therein. The ABC Plan signatories, including CenturyLink and FairPoint, are filing joint reply comments in response to the *Public Notice*.

to initial comments, the Joint Commenters' reply comments are limited to several key issues raised in the comments of other interested parties.

I. THE PUBLIC INTEREST SUPPORTS ADOPTION OF A RIGHT-OF-FIRST-REFUSAL FOR DISTRIBUTION OF CAF SUPPORT

A number of commenters urge the Commission to reject the ABC Plan proposal to provide incumbent local exchange carriers ("ILECs") with a right-of-first-refusal ("ROFR") and instead use competitive auctions or other mechanisms to distribute CAF support.[2] As previously demonstrated, it is imperative for ILECs to be able to exercise a ROFR with respect to broadband support where they have deployed service to at least 35 percent of service locations in the wire center.[3] Such a mechanism would ensure that the substantial network investment made by these providers who have carrier-of-last-resort ("COLR") obligations is protected and consumers in rural areas continue to receive broadband services.

Such companies already have constructed substantial broadband networks with the assistance of federal universal service fund dollars and are using those networks to provide broadband services in many high-cost rural areas today. Sufficient ongoing support is essential

[2] *See., e.g.,* Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) ("NCTA Comments"), at 15-16; Comments of Comcast Corporation, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) ("Comcast Comments"), at 28-30; Comments of Time Warner Cable Inc., WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) ("Time Warner Cable Comments"), at 17-20; Comments of the American Cable Association, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) ("ACA Comments"), at 10-14; Comments of Cox Communications, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011), at 23-24; Comments of the Free State Foundation, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011), at 3-4; Comments of Free Press, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011), at 8; Comments of the Satellite Broadband Providers, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) ("Satellite Broadband Providers Comments"), at 15-21.

[3] Comments of the Independent Telephone & Telecommunications Alliance, Cincinnati Bell Inc., Hargray Telephone Company, Inc., and Hickory Tech Corporation, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) ("ITTA, *et al*. Comments"), at 11-13.

for the continued maintenance and expansion of those networks.[4] The ability to exercise a ROFR in these circumstances also would ensure that broadband service is deployed as efficiently as possible. Because incumbent providers can leverage their existing facilities, the cost of upgrading and extending service to nearby areas will generally be far lower than the comparable costs of a new provider to provide service in the same area.[5]

Not only should the Commission adopt a ROFR as proposed in the ABC Plan, it also should avoid placing any burdensome limitations on the exercise of this right. The Satellite Broadband Providers, for instance, argue that: (1) no ROFR should be available in areas that are served more cost-efficiently by non-incumbent wireline technologies; (2) no ROFR should be available in areas that will be competitive in the near-to mid-term; (3) any ROFR should be available only where the incumbent is providing 4/1 Mbps broadband service to a substantial majority of households; (4) any cost model used in connection with the ROFR mechanism should be based on the costs of the most efficient provider; and (5) any provider that exercises a ROFR should have explicit COLR obligations throughout its service area, not just the areas in which it elects to receive funding.[6]

While the Satellite Broadband Providers argue that such mechanisms would "facilitate consumer choice" in their selection of broadband or voice providers,[7] this claim rings hollow. To the contrary, it appears that the Satellite Broadband Providers' proposed conditions on an incumbent's exercise of a ROFR are designed primarily to achieve a competitive advantage by imposing as many burdens on ILECs as possible, with no regard for the detrimental impact such

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[4] *See* Reply Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al*. (filed May 23, 2011) ("ITTA May 23 Reply Comments"), at 5.

[5] Comments of AT&T, Inc., WC Docket No. 10-90, *et al*., 98-99 (filed Apr. 18, 2011), at 99. *See also* CenturyLink Comments, WC Docket No. 10-90, *et al*. (filed Apr. 18, 2011), at 38-39.

[6] Satellite Broadband Providers Comments, at 19-21.

[7] *Id.*, at 19.

restrictions would have on the public interest. The Satellite Broadband Providers ignore the fundamental fact that in many high-cost rural areas, ILECs have deployed broadband facilities and are providing broadband services in accordance with their COLR obligations with the assistance of and ongoing support from the federal high-cost universal service fund.

More generally, as ITTA and others have explained previously,[8] competitive bidding presents a host of issues and potential problems that must be worked out before competitive bidding could be employed to distribute CAF support.[9] Among other things, auctions for areas served by those with COLR obligations would create difficult consumer issues if no bidders appear, and could lead to skewed results; participants could create havoc through strategic bidding, which could eliminate needed support without leading to improved service to subscribers; uncertainty over the market and agency rules could make the auction process unworkable; selection of a service area could increase costs and make evaluating bids very difficult; and auctions could lead to deteriorating service quality if build-out proves more costly than anticipated and if auctions are conducted at periodic intervals.[10] Thus, Commission adoption of any competitive bidding proposal must address these critical issues and ensure sufficient support to encourage build-out and maintenance of broadband-capable networks in rural areas in accordance with Section 254 of the Communications Act and the Commission's broader goal of encouraging availability and adoption of broadband service.[11]

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[8] *See, e.g.*, ITTA May 23 Reply Comments, at 4-5; Comments of State Members of the Federal State Joint Board on Universal Service, WC Docket No. 10-90, *et al*. (filed May 1, 2011), at 32-33.

[9] Of course, the Joint Commenters do not support competitive bidding in the absence of a ROFR mechanism for incumbent carriers.

[10] *See* n. 8, *supra*.

[11] Section 254 of the Communications Act, 47 U.S.C. § 254(e), provides that universal service "support should be explicit and sufficient to achieve the purposes" underlying the universal service regime.

II. THE COMMISSION SHOULD REFRAIN FROM ADOPTING IP INTERCONNECTION RULES IN THIS PROCEEDING

Several competitive local exchange carrier ("CLEC") commenters urge the Commission to establish rules in this proceeding to require all providers to interconnect with the facilities and equipment of other providers on an IP basis.[12] They contend that "the current system is hindering progress to all-IP networks" and IP interconnection rules are needed to encourage the transition to more efficient technologies and interconnection.[13] The Commission should reject calls to tackle IP interconnection issues in this docket and instead should focus its attention on adoption of critically-needed reforms of the current federal universal service ("USF") and intercarrier compensation ("ICC") programs.

The issues directly relating to USF and ICC reform before the Commission in this docket are extremely complex, with a multitude of interrelated elements. At the same time, the actions taken by the Commission could have profound and far-reaching impacts on the future of broadband in this country. In this high-stakes environment, it would be most prudent for the Commission to direct its efforts to the adoption of USF and ICC reforms that fairly balance all stakeholders' interests and, most importantly, promote the public interest in accelerating the deployment of broadband networks throughout the nation. Refereeing among the various parties

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[12] *See, e.g.,* Comments of HyperCube Telecom, LLC, WC Docket No. 10-90, *et al.* (filed Aug. 24, 2011) (HyperCube Comments"), at 5 ("[T]he FCC should establish new rules that clarify existing obligations and require *all* providers to interconnect … with other providers … on rates, terms and conditions that are just and reasonable.") (emphasis in original). *See also* Comments of XO Communications, LLC, WC Docket No. 10-90, *et al.* (filed Aug. 24, 2011), at 11-12. COMPTEL filed a "Competitive Amendment" with its comments which is designed in part to provide confirmation "that IP-to-IP interconnection is subject to Sections 251 and 252 of the Act." Comments of COMPTEL, WC Docket No. 10-90, *et al.* (filed Aug. 24, 2011) ("COMPTEL Comments"), at iii. Several COMPTEL member companies endorsed COMPTEL's position in their comments. *See, e.g.,* Comments of Pac-West Telecomm, Inc., WC Docket No. 10-90, *et al.* (filed Aug. 24, 2011), at 3; Comments of PAETEC Holding Corp., WC Docket No. 10-90, *et al.* (filed Aug. 24, 2011), at 18-24.

[13] HyperCube Comments, at 3.

on IP interconnection issues at this time would only serve to divert the Commission's limited resources away from the critical tasks at hand.[14] The Joint Commenters observe that the Commission currently is considering IP interconnection in a separate docket, which may be the appropriate forum to address the issue.[15]

Even if the Commission did have resources available to tackle IP interconnection in this docket, doing so would be premature. As Verizon and Verizon Wireless have noted, the industry is working, through an Alliance for Telecommunications Industry Solutions ("ATIS") Task Force, on "developing an IP network-to-network interconnection guideline … that will provide physical configuration, protocol suite profile, operational information to be exchanged between carriers, and test suites to support conformance and interoperability testing."[16] The adoption of regulatory mandates before industry standards have been established would force providers to develop a patchwork of carrier-by-carrier technical requirements. This would be inefficient and could "hamper the efficient rollout of IP interconnection nationwide."[17] And since such patchwork requirements likely would remain in place only until industry-wide standards are established, resources would have been diverted from broadband deployment-related pursuits for no long-term benefit.

In any event, should the Commission decide at some future date that federal rules relating to IP-based interconnection are appropriate or necessary, the Sections 251 and 252 construct

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[14] *See* NCTA Comments, at n. 43 ("Although it is important for the Commission quickly to address the refusal of incumbent LECs to directly interconnect in IP format for the provision of VoIP services, the Commission need not address those issues in this proceeding.").

[15] *In the Matter of Petition for Declaratory Ruling that tw telecom inc. has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-in-the-Middle Voice Service*, Public Notice, WC Docket No. 11-119, DA 11-1198 (rel. July 15, 2011).

[16] Comments of Verizon and Verizon Wireless, WC Docket No. 11-119 (filed Aug. 15, 2011) ("Verizon IP Comments"), at 5.

[17] *Id*.

advocated by tw telecom, COMPTEL, and other CLECs would not be an appropriate framework for such rules. The Sections 251 and 252 regulatory obligations urged by advocates apply exclusively to ILECs and, thus, would be an inappropriate basis for IP interconnection rules that should apply to all network providers.

III. THE COMMISSION SHOULD REJECT CALLS TO RESTRICT THE SCOPE OR AVAILABILITY OF THE ACCESS RECOVERY MECHANISM

A number of commenting parties object to the employment of an access recovery mechanism ("ARM") to assist ILECs in recovering lost revenues as terminating access rates are transitioned to $0.0007/minute.[18] Some commenters urge the Commission to limit application of the ARM to rate-of-return carriers,[19] some would require price cap carriers to show "demonstrable harm" to be eligible for the ARM,[20] and a few call on the Commission to reject the use of an ARM altogether.[21] These suggestions all would improperly penalize ILECs and therefore should be rejected by the Commission.

The commenters that call for the ARM to be eliminated or significantly constrained fail to acknowledge an essential fact that is particularly true for the Joint Commenters and other mid-size carriers serving high-cost rural areas. Intercarrier compensation is a critical revenue component for these companies. These carriers depend on intercarrier compensation revenues to maintain and upgrade the networks they have deployed and are using to provide broadband and voice services to consumers. Elimination of, or drastic reductions to, intercarrier compensation

[18] As documented in their initial comments, the Joint Commenters do not support the proposed $0.0007 rate and urge the Commission to consider alternative proposals that would permit carriers to keep consumer costs down and maintain sufficient revenues to continue to invest in broadband networks. *See* ITTA, *et al.* Comments, at 20-22.

[19] *See* Time Warner Cable Comments, at 13; NCTA Comments, at 5.

[20] ACA Comments, at 15.

[21] *See, e.g.,* Comments of the Rural Cellular Association, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011), at 22-23; Comments of Sprint Nextel Corporation, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011), at 21-22.

revenues without an alternative means of revenue recovery would result in substantially increased rates in rural areas, necessitating further universal service support to meet the requirements of Section 254. The eight-year declining ARM for price cap carriers included in the ABC Plan provides a gradual glide path that would allow mid-size ILECs sufficient time to adjust their operations to avoid significant rate shock.[22] Any changes in the ARM that would result in a more precipitous decline in intercarrier compensation revenues could prove disastrous for these carriers and their rural consumers.[23]

IV. THE COMMISSION SHOULD AFFORD COMPARABLE TREATMENT TO ALL TRAFFIC

Under the ABC Plan, VoIP traffic would be subject to different intercarrier compensation rates than those applied to other access traffic during the first part of the transition.[24] Specifically, for the first eighteen months of the transition, interstate access rates would apply to any call to or from an interconnected VoIP service, even if the call is an intrastate toll call.[25] The ABC Plan provides no basis for differential treatment of VoIP traffic, and as several commenters have pointed out, this approach presents opportunities for arbitrage that could unfairly distort intercarrier compensation rates paid to terminating carriers. In addition, it is inconsistent with the Commission's established policy of treating like services alike.[26] As the Commission has

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[22] *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed July 29, 2011) ("ABC Plan"), Attachment 1, at 12-13.

[23] As noted in the Joint Commenters' initial comments, the Commission should phase out any benchmark rate utilized to calculate ARM payments as the ARM is phased out. ITTA, *et al*. Comments, at 25.

[24] ABC Plan, Attachment 1, at 10-11.

[25] *Id*.

[26] *See, e.g.,* Comments of COMPTEL, at 13-15; Comments of Bright House Networks Information Services, LLC, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011); Comments of Charter Communications, Inc., WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011).

previously stated, intercarrier compensation "must be competitively and technologically neutral" and provide "similar rates for similar functions."[27] For these reasons, the Joint Commenters agree with those commenters counseling against disparate treatment for VoIP traffic and support application of the same intercarrier compensation rates to all voice traffic, including IP-based traffic, throughout the transition.

V. THE COMMISSION SHOULD REFRAIN FROM IMPOSING SPECIFIC BUILD-OUT MILESTONES ON CAF RECIPIENTS AND INSTEAD SHOULD ADOPT REASONABLE REPORTING REQUIREMENTS

Several commenters urge the Commission to impose specific build-out obligations on CAF recipients to ensure that such recipients deploy broadband at an acceptable rate during the build-out period. Comcast, for instance, endorses the State Joint Board Members' recommendation that the Commission adopt specific broadband build-out milestones at years 1, 3, and 5 of deployment and urges the Commission to "emphasize the seriousness of its build-out obligations by making clear that subsidy payments for broadband build-outs will automatically be suspended for any recipient that fails to meet any milestone."[28] Similarly, the Satellite Broadband Providers advocate "well-defined milestones" that are "strictly enforced and backed by performance bonds."[29] The group also argues that "[p]arties that exercise ROFRs but do not meet milestones should be debarred from receiving additional funds for a period of time, and should be required to return any funds that they have received to date."[30]

The Commission should refrain from adopting interim milestones or unreasonable penalties on CAF recipients, such as those suggested above. While it is entirely appropriate for

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[27] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, ¶ 33 (2005).

[28] Comcast Comments, at 33-34.

[29] Satellite Broadband Providers Comments, at 22.

[30] *Id.*

the Commission to set a date by which a CAF recipient must fully meet its broadband build-out requirements (a period of five years is reasonable),[31] it would not be useful or effective for the Commission to impose interim build-out benchmark dates or penalize recipients by withholding or requiring a refund of funds already allocated in the event a CAF recipient does not meet an interim benchmark.

As explained in the Joint Commenters' initial comments in this proceeding, a myriad of factors, many of which may be completely out of the CAF recipient's control (*e.g.*, weather, supply chain delays, etc.), could affect the rate of deployment of network facilities.[32] Moreover, it is entirely reasonable to expect that the amount of time and funding needed to deploy the first 20 percent of a supported network could be greater than that required to deploy the second or third 20 percent. Mandating arbitrary benchmarks and/or linking the distribution of CAF support to the percentage of network deployment a recipient has achieved would fail to provide any guaranteed benefit and could unfairly penalize recipients.

In lieu of build-out benchmarks, the Joint Commenters endorse the adoption of reasonable reporting requirements for CAF recipients. Specifically, CAF recipients should be required annually to file reports with the Commission detailing the status of their network build-out processes. Through review of these reports the Commission can monitor CAF recipients' compliance with program requirements and take action should specific situations warrant regulatory intervention.

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[31] The Commission should reject claims raised by certain parties that the proposed five-year build-out period is "an inordinate amount of time to construct facilities." *See* ACA Comments, at 12; Comments of Google Inc., WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011), at 23. To the contrary, five years is a reasonable amount of time in which to achieve build-out obligations based on the various marketplace considerations that may come into play in constructing broadband facilities. Further, five years is consistent with the transition period for phase-out of legacy high-cost support under the ABC Plan.

[32] ITTA, *et al*. Comments, at 14-15.

VI. CONCLUSION

For all of the foregoing reasons, the Commission should adopt USF and ICC reforms that are consistent with the arguments expressed herein and in the Joint Commenters' initial comments.

Respectfully submitted,

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September 6, 2011